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Attorneys for Plaintiff JENER DA SILVA,
individually, and on behalf of other similarly situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENER DA SILVA, an individual, and
on behalf of others similarly situated

Plaintiff,

vs.

DARDEN RESTAURANTS, INC., a
Florida Corporation; GMRI, INC., a
Florida Corporation; YARD HOUSE
USA, INC., a Delaware Corporation;
YARD HOUSE NORTHRIDGE LLC.,
a California Limited Liability
Company; and DOES 1 through 100,
inclusive.

Defendants

CASE NO.:

CLASS ACTION

COMPLAINT:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Authorize and Permit Rest Periods
3. Failure to Pay Minimum Wages
4. Failure to Pay Overtime Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Furnish Accurate Itemized Wage Statements
7. Failure to Maintain Required Records
8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
9. Unfair and Unlawful Business Practices

COLLECTIVE ACTION:

10. Failure to Pay All Wages and Overtime Compensation in Violation of the Fair Labor Standards Act

DEMAND FOR JURY TRIAL

1 PLAINTIFF JENER DA SILVA (“PLAINTIFF”) an individual, demanding a
 2 jury trial, on behalf of himself and other persons similarly situated, hereby alleges
 3 as follows:

4 **JURISDICTION AND VENUE**

5 1. The United States District Court for the Central District of California has
 6 jurisdiction in this matter under the Class Action Fairness Act of 2005, 28 U.S.C. §
 7 1332(d).

8 2. PLAINTIFF is a citizen and resident of the State of California. At
 9 times material to this complaint, PLAINTIFF was employed by DEFENDANTS in
 10 the State of California as a non-exempt employee with the title of Server for
 11 defendants DARDEN RESTAURANTS, INC., (“DEFENDANT DARDEN”), a
 12 corporation of Florida, GMRI, INC., (“DEFENDANT GMRI”), a corporation of
 13 Florida, YARD HOUSE USA, INC., (“DEFENDANT YH USA”), a corporation of
 14 Delaware, YARD HOUSE NORTHRIDGE, LLC., (“DEFENDANT YH
 15 NORTHRIDGE”), a California Limited Liability Company, and DOES 1 through
 16 100, inclusive (collectively, “DEFENDANTS”).

17 3. The Fair Labor Standards Act (“FLSA”) authorizes private rights of
 18 action to recover damages for violation of the FLSA's wage and hour provisions.
 19 29 U.S.C. § 216(b). This Court has original federal question jurisdiction under 28
 20 U.S.C. § 1331. This Court has supplemental jurisdiction over the California state
 21 law claims because they are so related to this action that they form part of the same
 22 case or controversy under Article III of the United States Constitution. The United
 23 States District Court for the Central District of California has jurisdiction in this
 24 matter under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

25 4. Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)(A)
 26 (“CAFA”), the United States District Court for the Central District of California has
 27 jurisdiction in this matter because the matter in controversy exceeds the sum value
 28 of \$5,000,000, exclusive of interest and costs, and this is a class action in which at

1 least one member of the class of plaintiffs is a citizen of a State different from any
2 defendant.

3 5. Venue is proper in the Central District of California pursuant to 28
4 U.S.C. § 1391 because DEFENDANTS are subject to personal jurisdiction in this
5 District and/or a substantial part of the events or omissions giving rise to the claims
6 occurred in this District.

7 **PLAINTIFF**

8 6. PLAINTIFF is a male resident of the State of California and a former
9 employee of DEFENDANTS.

10 7. PLAINTIFF was employed by DEFENDANTS as a non-exempt
11 server at DEFENDANTS' restaurant in Northridge, California from approximately
12 June 2014 through June 20, 2015.

13 8. PLAINTIFF brings this action on behalf of himself and the following
14 similarly-situated class of individuals ("CLASS MEMBERS"): all current and
15 former non-exempt employees of DEFENDANTS in the State of California at
16 any time within the period beginning four (4) years prior to the filing of this
17 action and ending at the time this action settles or proceeds to final judgment (the
18 "CLASS PERIOD"). PLAINTIFF reserves the right to name additional class
19 representatives

20 9. PLAINTIFF, on behalf himself and other similarly situated current and
21 former non-exempt employees of DEFENDANTS in the State of California, brings
22 this class action to recover, among other things, wages and penalties from unpaid
23 wages earned and due, including but not limited to unpaid minimum wages, unpaid
24 and illegally calculated overtime compensation, illegal meal and rest period
25 policies, failure to pay all wages due to discharged and quitting employees, failure
26 to indemnify employees for necessary expenditures and/or losses incurred in
27 discharging their duties, failure to provide accurate itemized wage statements,
28 failure to maintain required records, and interest, attorneys' fees, costs, and

1 expenses.

2 **DEFENDANTS**

3 10. PLAINTIFF is informed and believes, and thereon allege, that
4 DEFENDANT DARDEN is, and at all times relevant hereto was, a corporation
5 organized and existing under the laws of the State of Florida. PLAINTIFF is
6 further informed and believes, and thereon alleges, that DEFENDANT DARDEN is
7 authorized to conduct business in the State of California, and does conduct business
8 in the State of California. Specifically, upon information and belief, DEFENDANT
9 DARDEN maintains offices and facilities and conducts business in, and engages in
10 illegal payroll practices or policies in, the County of Los Angeles, State of
11 California.

12 11. PLAINTIFF is informed and believes, and thereon alleges, that
13 DEFENDANT GMRI is, and at all times relevant hereto was, a corporation
14 organized and existing under the laws of the State of Florida. PLAINTIFF is
15 further informed and believes, and thereon alleges, that DEFENDANT GMRI is
16 authorized to conduct business in the State of California, and does conduct business
17 in the State of California. Specifically, upon information and belief, DEFENDANT
18 GMRI maintains offices and facilities and conducts business in, and engages in
19 illegal payroll practices or policies in, the County of Los Angeles, State of
20 California.

21 12. PLAINTIFF is informed and believes, and thereon alleges, that
22 DEFENDANT YH USA is, and at all times relevant hereto was, a corporation
23 organized and existing under the laws of the State of Delaware. PLAINTIFF is
24 further informed and believes, and thereon alleges, that DEFENDANT YH USA is
25 authorized to conduct business in the State of California, and does conduct business
26 in the State of California. Specifically, upon information and belief, DEFENDANT
27 YH USA maintains offices and facilities and conducts business in, and engages in
28 illegal payroll practices or policies in, the County of Los Angeles, State of

1 California.

2 13. PLAINTIFF is informed and believes, and thereon alleges, that
3 DEFENDANT YH NORTHRIDGE is, and at all times relevant hereto was, a
4 Limited Liability Company organized and existing under the laws of the State of
5 California. PLAINTIFF is further informed and believes, and thereon alleges, that
6 DEFENDANT YH NORTHRIDGE is authorized to conduct business in the State
7 of California, and does conduct business in the State of California. Specifically,
8 upon information and belief, DEFENDANT YH NORTHRIDGE maintains offices
9 and facilities and conducts business in, and engages in illegal payroll practices or
10 policies in, the County of Los Angeles, State of California

11 14. The true names and capacities of DOES 1 through 100, inclusive, are
12 unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE
13 Defendants under fictitious names. PLAINTIFF is informed and believes, and
14 thereon alleges, that each defendant designated as a DOE is highly responsible in
15 some manner for the events and happenings referred to herein, and that
16 PLAINTIFF's and CLASS MEMBERS' injuries and damages, as alleged herein,
17 were proximately caused by the conduct of such DOE defendants. PLAINTIFF
18 will seek leave of the court to amend this Complaint to allege their true names and
19 capacities when ascertained.

20 15. At all relevant times herein, DEFENDANTS were the joint employers
21 of PLAINTIFF and CLASS MEMBERS. PLAINTIFF is informed and believes,
22 and thereon alleges, that at all times material to this complaint DEFENDANTS
23 were the alter egos, divisions, affiliates, integrated enterprises, joint employers,
24 subsidiaries, parents, principals, related entities, co-conspirators, authorized agents,
25 partners, joint venturers, and/or guarantors, actual or ostensible, of each other.
26 Each defendant was completely dominated by his, her or its co-defendants, and
27 each was the alter ego of the other.

28 16. At all relevant times herein, PLAINTIFF and CLASS MEMBERS

1 were employed by DEFENDANTS under employment agreements that were partly
2 written, partly oral, and partly implied. In perpetrating the acts and omissions
3 alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in
4 furtherance of, their policies and practices of not paying PLAINTIFF and CLASS
5 MEMBERS all wages earned and due, through methods and schemes which
6 include, but are not limited to, failing to pay overtime premiums; failing to provide
7 rest and meal periods; failing to properly maintain records; failing to provide
8 accurate itemized statements for each pay period; failing to properly compensate
9 PLAINTIFF and CLASS MEMBERS for necessary expenditures; and requiring,
10 permitting or suffering the employees to work off the clock, in violation of the
11 California Labor Code and the applicable Industrial Welfare Commission (“IWC”)
12 Orders.

13 17. PLAINTIFF is informed and believes, and thereon alleges, that each
14 and every one of the acts and omissions alleged herein were performed by, and/or
15 attributable to, all DEFENDANTS, each acting as agents and/or employees, and/or
16 under the direction and control of, each of the other DEFENDANTS, and that said
17 acts and failures to act were within the course and scope of said agency,
18 employment and/or direction and control.

19 18. As a direct and proximate result of the unlawful actions of
20 DEFENDANTS, PLAINTIFF and CLASS MEMBERS have suffered, and continue
21 to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof
22 at trial, and within the jurisdiction of this Court.

23 **CLASS ACTION DESIGNATION**

24 19. This action is appropriately suited for a Class Action because:

25 a. The potential class is a significant number. Joinder of all current
26 and former employees individually would be impracticable.

27 b. This action involves common questions of law and fact to the
28 potential class because the action focuses on DEFENDANTS’ illegal practices and

1 policies which were applied to all non-exempt employees in violation of the Labor
2 Code, the applicable IWC Wage Order, and the Business and Professions Code
3 which prohibits unfair business practices arising from such violations.

4 c. PLAINTIFF's claims are typical of the claims of the CLASS
5 MEMBERS because DEFENDANTS subjected all non-exempt employees to the
6 same violations of the Labor Code, the applicable IWC Wage Order, and the
7 Business and Professions Code.

8 d. PLAINTIFF does not have any interests adverse to the interests
9 of the CLASS MEMBERS and will fairly and adequately protect the interests of all
10 CLASS MEMBERS.

11 **FIRST CAUSE OF ACTION**

12 **Failure to Provide Required Meal Periods**

13 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001,**
14 **§ 11]**

15 **(Against all DEFENDANTS)**

16 20. PLAINTIFF incorporates herein by specific reference, as though fully
17 set forth, the allegations in paragraphs 1 through 19.

18 21. During the CLASS PERIOD, as part of DEFENDANTS' illegal
19 payroll policies and practices to deprive their non-exempt employees all wages
20 earned and due, DEFENDANTS required, permitted or otherwise suffered
21 PLAINTIFF and CLASS MEMBERS to take less than the 30-minute meal period,
22 or to work through them, and have failed to otherwise provide the required meal
23 periods to PLAINTIFF and CLASS MEMBERS pursuant to California Labor Code
24 § 226.7, 512 and IWC Order No. 5-2001, § 11.

25 22. During the CLASS PERIOD, PLAINTIFF and other CLASS
26 MEMBERS were required to work through or cut short their meal breaks because
27 DEFENDANTS failed to maintain adequate staffing levels. DEFENDANTS
28 required PLAINTIFF and other CLASS MEMBERS to assist customers, respond to

1 emails, and answer texts during these breaks. DEFENDANTS regularly failed to
2 staff enough employees to assist customers while permitting PLAINTIFF and other
3 CLASS MEMBERS to take required meal breaks.

4 23. During the CLASS PERIOD, PLAINTIFF and CLASS MEMBERS
5 were deprived of timely meal breaks. PLAINTIFF and other CLASS MEMBERS
6 were required to remain engaged with supervisors and clients at all times,
7 regardless of how much time had passed since the start of their shifts. Similarly,
8 PLAINTIFF and other CLASS MEMBERS were required to cover for other
9 employees, leading to breaks, when available, occurring several hours after they
10 were legally required. As a result, PLAINTIFF and CLASS MEMBERS were
11 prevented from taking a meal break prior to the end of the fifth hour of work.

12 24. DEFENDANTS further violated California Labor Code §§ 226.7 and
13 IWC Wage Order No. 5-2001, § 11 by failing to compensate PLAINTIFF and
14 CLASS MEMBERS who were not provided with a meal period, in accordance with
15 the applicable wage order, one additional hour of compensation at each employee's
16 regular rate of pay for each workday that a meal period was not provided.

17 25. DEFENDANTS further violated California Labor Code §§ 226.7, 510,
18 1194, 1197, and IWC Wage Order No. 5-2001 by failing to compensate
19 PLAINTIFF and CLASS MEMBERS for all hours worked during their meal
20 periods.

21 26. As a direct and proximate result of the aforementioned violations,
22 PLAINTIFF and CLASS MEMBERS have sustained economic damages, including
23 but not limited to unpaid wages and lost interest, in an amount according to proof at
24 trial, and are entitled to recover economic and statutory damages and penalties and
25 other appropriate relief due to DEFENDANTS' violations of the California Labor
26 Code and IWC Wage Order No. 5-2001.

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SECOND CAUSE OF ACTION

Failure to Authorize and Permit Rest Periods

[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12]

(Against all DEFENDANTS)

27. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 26.

28. During the CLASS PERIOD, DEFENDANTS had, and continue to have, a policy or practice of failing to authorize and permit PLAINTIFF and CLASS MEMBERS to take rest breaks as required by California Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12. As a result of DEFENDANTS' illegal policies and practices, PLAINTIFF and CLASS MEMBERS regularly have been, and continue to be, denied the opportunity to take full, uninterrupted, and timely rest periods as required under California Labor Code §§ 226.7 and IWC Wage Order No. 5-2001, § 12.

29. During the COVERED PERIOD, DEFENDANTS provided PLAINTIFF and CLASS MEMBERS with policies that did not permit second rest breaks for shifts between six and eight hours or third rest breaks for shifts over ten hours.

30. DEFENDANTS violated, and continue to violate, California Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who were not provided with a rest period, in accordance with the applicable wage order, one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

31. As a direct and proximate result of the aforementioned violations, PLAINTIFF and CLASS MEMBERS have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount according to proof at trial, and are entitled to recover economic and statutory damages and penalties and

1 other appropriate relief due to DEFENDANTS' violation of the California Labor
2 Code and IWC Wage Order No. 5-2001.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Pay Minimum Wages**

5 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

6 **(Against all DEFENDANTS)**

7 32. PLAINTIFF incorporates herein by specific reference, as though fully
8 set forth, the allegations in paragraphs 1 through 31.

9 33. Pursuant to California Labor Code §§ 1194 and 1197, and IWC Wage
10 Order No. 5-2001, § 4, payment to an employee of less than the applicable
11 minimum wage for all hours worked in a payroll period is unlawful.

12 34. During the CLASS PERIOD, DEFENDANTS failed to, and continue
13 to fail to, pay PLAINTIFF and CLASS MEMBERS minimum wages for all hours
14 worked by, among other things: requiring, suffering, or permitting PLAINTIFF
15 and CLASS MEMBERS to work off-the-clock; requiring, suffering, or permitting
16 PLAINTIFF and CLASS MEMBERS to work through meal breaks; illegally and
17 inaccurately recording time worked by PLAINTIFF and CLASS MEMBERS;
18 failing to properly maintain PLAINTIFF's and CLASS MEMBERS' records;
19 failing to provide accurate itemized wage statements to PLAINTIFF and CLASS
20 MEMBERS for each pay period; and other methods to be discovered.

21 35. DEFENDANTS knew or should have known that PLAINTIFF and
22 CLASS MEMBERS worked hours for which they were not compensated.

23 36. DEFENDANTS' conduct described herein violates, and continues to
24 violate, California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 5-
25 2001, § 4. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CLASS MEMBERS have been damaged in an amount according to proof at trial.
27 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, and
28 1197.1 and other applicable provisions under the Labor Code and IWC Wage

1 Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid
 2 balance of wages owed to them by DEFENDANTS, plus interest, penalties,
 3 attorneys' fees, expenses, and costs of suit.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 **[Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 5-2001, § 3]**

7 **(Against all DEFENDANTS)**

8 37. PLAINTIFF incorporates herein by specific reference, as though fully
 9 set forth, the allegations in paragraphs 1 through 36.

10 38. Pursuant to California Labor Code §§ 510 and 1194, and IWC Wage
 11 Order No. 5-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF
 12 and CLASS MEMBERS for all overtime, which is calculated at one and one-half (1
 13 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
 14 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh
 15 consecutive workday, with double time for all hours worked in excess of twelve
 16 (12) hours in any workday and for all hours worked in excess of eight (8) hours on
 17 the seventh consecutive day of work in any workweek.

18 39. PLAINTIFF and CLASS MEMBERS are current and former non-
 19 exempt employees entitled to the protections of California Labor Code §§ 510 and
 20 1194, and IWC Wage Order No. 5-2001.

21 40. During the CLASS PERIOD, DEFENDANTS failed to compensate
 22 PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required
 23 under the foregoing provisions of the California Labor Code and IWC Wage Order
 24 by, among other things: failing to pay overtime at one and one-half (1 ½) or double
 25 the regular rate of pay as provided by California Labor Code §§ 510 and 1194 and
 26 IWC Wage Order No. 5-2001, § 3; requiring, suffering, or permitting PLAINTIFF
 27 and CLASS MEMBERS to work off-the-clock; requiring, suffering, or permitting
 28 PLAINTIFF and CLASS MEMBERS to work through meal breaks but not

1 compensating them for this time and failing to include this time in their hours
 2 worked; illegally and inaccurately recording time in which PLAINTIFF and
 3 CLASS MEMBERS worked; failing to properly maintain PLAINTIFF's and
 4 CLASS MEMBERS' records; failing to provide accurate itemized wage statements
 5 to PLAINTIFF for each pay period; and other methods to be discovered.

6 41. DEFENDANTS knew or should have known that PLAINTIFF and
 7 CLASS MEMBERS worked overtime hours for which they were not compensated.

8 42. In violation of California law, DEFENDANTS have knowingly and
 9 willfully refused, and continue to refuse, to perform their obligations to compensate
 10 PLAINTIFF and CLASS MEMBERS for all wages earned and all hours worked.
 11 As a proximate result, PLAINTIFF and CLASS MEMBERS have suffered, and
 12 continue to suffer, substantial losses related to the use and enjoyment of such
 13 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to
 14 compel DEFENDANTS to fully perform their obligations under state law, all to
 15 their respective damages in amounts according to proof at time of trial, and within
 16 the jurisdiction of this Court.

17 43. DEFENDANTS' conduct described herein violates, and continues to
 18 violate, California Labor Code §§ 510, 1194, 1198 and IWC Wage Order No. 5-
 19 2001, § 3. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
 20 1194, 1197.1, and other applicable provisions under the California Labor Code and
 21 IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the
 22 unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties,
 23 attorneys' fees, expenses, and costs of suit.

24 **FIFTH CAUSE OF ACTION**

25 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

26 **[Cal. Labor Code §§ 201, 202, 203]**

27 **(Against all DEFENDANTS)**

28 44. PLAINTIFF incorporates herein by specific reference, as though fully

1 set forth, the allegations in paragraphs 1 through 43.

2 45. Pursuant to California Labor Code § 201, 202, and 203,
3 DEFENDANTS are required to pay all earned and unpaid wages to discharged and
4 quitting employees.

5 46. California Labor Code § 201 mandates that if an employer discharges
6 an employee, the employee's wages accrued and unpaid at the time of discharge are
7 due and payable immediately.

8 47. Pursuant to California Labor Code § 202, DEFENDANTS are required
9 to pay all accrued wages due to an employee no later than 72 hours after the
10 employee quits his or her employment, unless the employee provided 72 hours
11 previous notice of his or her intention to quit, in which case the employee is entitled
12 to his or wages at the time of quitting.

13 48. California Labor Code § 203 provides that if an employer willfully
14 fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages
15 of an employee who is discharged or who quits, the employer is liable for waiting
16 time penalties in the form of continued compensation to the employee at the same
17 rate for up to 30 workdays.

18 49. During the CLASS PERIOD, DEFENDANTS have willfully failed,
19 and continue to willfully fail, to pay accrued wages and other compensation to
20 PLAINTIFF and CLASS MEMBERS in accordance with California Labor Code §§
21 201 and 202.

22 50. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all
23 available statutory penalties, including the waiting time penalties provided in
24 California Labor Code § 203, together with interest thereon, as well as other
25 available remedies.

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SIXTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements
[Cal. Labor Code § 226; IWC Wage Order No. 5-2001, § 7]
(Against all DEFENDANTS)

51. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 50.

52. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed, and continue to fail, to provide PLAINTIFF and CLASS MEMBERS with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing PLAINTIFF and CLASS MEMBERS, piece rate wages, the last four digits of PLAINTIFF's and CLASS MEMBERS' social security numbers or employee identification numbers, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order No. 5-2001, § 7.

53. During the CLASS PERIOD, PLAINTIFF and CLASS MEMBERS suffered, and continue to suffer, injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage statements, as PLAINTIFF and CLASS MEMBERS could not promptly and easily determine from the wage statement alone one or more of the following: the gross wages earned, the total hours worked, all deductions made, the net wages earned, the name and address of the legal entity or entities employing PLAINTIFF and CLASS MEMBERS, and/or all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

54. As a direct and proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an

1 amount according to proof at trial, and seek all wages earned and due, plus interest
 2 thereon. Additionally, PLAINTIFF and CLASS MEMBERS are entitled to all
 3 available statutory and civil penalties, including but not limited to statutory and
 4 civil penalties pursuant to California Labor Code § 226(e) and 1174.5, and an
 5 award of costs, expenses, and reasonable attorneys' fees, including but not limited
 6 to those provided in California Labor Code § 226(e), as well as other available
 7 remedies.

8 **SEVENTH CAUSE OF ACTION**

9 **Failure to Maintain Required Records**

10 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 7]**

11 **(Against all DEFENDANTS)**

12 55. PLAINTIFF incorporates herein by specific reference, as though fully
 13 set forth, the allegations in paragraphs 1 through 54.

14 56. During the CLASS PERIOD, as part of DEFENDANTS' illegal
 15 policies and practices to deprive PLAINTIFF and CLASS MEMBERS of all wages
 16 earned and due, DEFENDANTS knowingly and intentionally failed to maintain
 17 records as required under California Labor Code §§ 226 and 1174 and IWC Wage
 18 Order No. 5-2001, § 7, including but not limited to the following records: total
 19 daily hours worked by each employee; applicable rates of pay; all deductions; meal
 20 periods; time records showing when each employee begins and ends each work
 21 period; and accurate itemized statements.

22 57. As a proximate result of DEFENDANTS' unlawful actions and
 23 omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an amount
 24 according to proof at trial, and are entitled to all wages earned and due, plus interest
 25 thereon. Additionally, PLAINTIFF and CLASS MEMBERS are entitled to all
 26 available statutory penalties, including but not limited to civil penalties pursuant to
 27 California Labor Code §§ 226(e) and 1174.5, and an award of costs, expenses, and
 28

1 reasonable attorneys' fees, including but not limited to those provided in California
2 Labor Code § 226(e), as well as other available remedies.

3 **EIGHTH CAUSE OF ACTION**

4 **Failure to Indemnify Employees for Necessary Expenditures Incurred in** 5 **Discharge of Duties** 6 **[Cal. Labor Code § 2802]** 7 **(Against all DEFENDANTS)**

8 58. PLAINTIFF incorporates herein by specific reference, as though fully
9 set forth, the allegations in paragraphs 1 through 57.

10 59. California Labor Code § 2802(a) requires an employer to indemnify an
11 employee for all necessary expenditures or losses incurred by the employee in
12 direct consequence of the discharge of her his or her duties, or of his or her
13 obedience to the directions of the employer.

14 60. During the CLASS PERIOD, DEFENDANTS knowingly and willfully
15 failed, and continue to fail, to indemnify PLAINTIFF and CLASS MEMBERS for
16 all business expenses and/or losses incurred in direct consequence of the discharge
17 of their duties while working under the direction of DEFENDANTS, including but
18 not limited to expenses for uniforms, cell phone usage, and other employment-
19 related expenses, in violation of California Labor Code § 2802.

20 61. As a proximate result of DEFENDANTS' unlawful actions and
21 omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an amount
22 according to proof at trial, and seek reimbursement of all necessary expenditures,
23 plus interest thereon pursuant to California Labor Code § 2802(b). Additionally,
24 PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties
25 and an award of costs, expenses, and reasonable attorneys' fees, including those
26 provided in California Labor Code § 2802(c), as well as other available remedies.

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NINTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

[Cal. Bus. & Prof. Code § 17200, *et seq.*]

(Against all DEFENDANTS)

62. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 61.

63. Each and every one of DEFENDANTS' acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to DEFENDANTS' failure to provide meal periods, DEFENDANTS' failure to authorize and permit rest periods, DEFENDANTS' failure to pay minimum and overtime wages, DEFENDANTS' failure to pay all wages due to discharged and quitting employees, DEFENDANTS' failure to furnish accurate itemized wage statements, DEFENDANTS' failure to maintain required records, DEFENDANTS' failure to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or losses incurred in discharging their duties, constitutes an unfair and unlawful business practice under California Business and Professions Code § 17200, *et seq.*

64. DEFENDANTS' violations of California wage and hour laws constitute a business practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS MEMBERS.

65. DEFENDANTS have avoided payment of wages, overtime wages, meal and rest break premium payments, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

66. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS should be made to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS MEMBERS.

67. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and CLASS MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

COLLECTIVE ACTION

TENTH CAUSE OF ACTION

Failure to Pay All Wages and Overtime Compensation in Violation of the Fair

Labor Standards Act

[29 U.S.C. § 201 et seq.]

(Against All DEFENDANTS)

68. PLAINTIFF incorporates herein by specific reference as though fully set forth the allegations in all preceding paragraphs, with exception of the allegations in paragraph 19 and the subparagraphs thereto.

69. The FLSA, 29 U.S.C. § 201 *et seq.*, provides that an employee must be compensated for all hours worked, including all straight time compensation and overtime compensation.

70. The FLSA further provides that employees shall not be employed more than forty (40) hours in any workweek, unless they receive additional compensation beyond their regular wages in amounts specified by law.

1 71. The FLSA requires, among other things, that employers whose
2 employees are engaged in interstate commerce, engaged in the production of goods
3 for commerce, or employed in an enterprise engaged in commerce or in the
4 production of goods for commerce must pay employees the minimum wage for all
5 time worked and overtime pay at their regular rate of pay. 29 U.S.C. §§ 206(a)(1)
6 and 207(a)(1). DEFENDANTS are subject to the requirements of the FLSA
7 because they are an enterprise engaged in interstate commerce and their employees
8 are engaged in commerce.

9 72. PLAINTIFF and all similarly situated employees (the “COLLECTIVE
10 CLASS”) are victims of a uniform and company-wide compensation policy which,
11 in violation of the FLSA, has been applied to all non-exempt employees who
12 worked for DEFENDANTS in the State of California.

13 73. DEFENDANTS have a uniform policy and practice of failing to pay
14 PLAINTIFF and the COLLECTIVE CLASS wages and overtime compensation for
15 all hours worked; requiring, permitting, or suffering PLAINTIFF and CLASS
16 MEMBERS to work off the clock; requiring, permitting, or suffering PLAINTIFF
17 and CLASS MEMBERS to work through meal and rest periods; illegally and
18 inaccurately recording time in which PLAINTIFF and CLASS MEMBERS
19 worked; failing to properly maintain PLAINTIFF’S and CLASS MEMBERS’
20 records; and failing to provide accurate itemized wage statements to PLAINTIFF
21 and CLASS MEMBERS for each pay period.

22 74. DEFENDANTS have a class-wide policy and practice of failing to pay
23 PLAINTIFF and CLASS MEMBERS overtime wages at their regular rate of pay.
24 DEFENDANTS’ method of calculating the regular rate of pay for overtime
25 purposes is unlawful under California and federal law.

26 75. DEFENDANTS have a uniform policy and practice of not paying
27 PLAINTIFF and the COLLECTIVE CLASS for all hours worked, including
28 straight time and overtime compensation, and requiring employees to work passed

1 their scheduled shift without compensation.

2 76. 29 U.S.C. § 255 provides that a three-year statute of limitations applies
3 to willful violations of the FLSA. DEFENDANTS' unlawful conduct, as described
4 herein, has been willful and intentional. DEFENDANTS were aware or should have
5 been aware that their practices were unlawful.

6 77. DEFENDANTS have acted neither in good faith nor with reasonable
7 grounds to believe that their actions and omissions were not a violation of the
8 FLSA, and as a result thereof, PLAINTIFFS and the COLLECTIVE CLASS are
9 entitled to recover an award of liquidated damages in an amount equal to the
10 amount of unpaid wages and overtime pay, and/or prejudgment interest at the
11 applicable rate. 29 U.S.C. §216(b).

12 78. By virtue of DEFENDANTS' unlawful failure to pay PLAINTIFF and
13 members of the COLLECTIVE CLASS for all hours worked, including overtime,
14 PLAINTIFF and the COLLECTIVE CLASS have suffered, and will continue to
15 suffer, damages in amounts which are presently unknown to PLAINTIFF and
16 members of the COLLECTIVE CLASS, but which will be ascertained according to
17 proof at trial. Accordingly, DEFENDANTS are liable for unpaid wages, together
18 with an amount equal as liquidated damages, attorney's fees and costs of this
19 action.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF, individually and on behalf of all other persons
22 similarly situated, respectfully prays for relief against DEFENDANTS, and each of
23 them, as follows:

- 24 1. For compensatory damages in an amount to be ascertained at trial;
- 25 2. For restitution of all monies due to PLAINTIFF and CLASS
- 26 MEMBERS, as well as disgorged profits from DEFENDANTS' unfair and
- 27 unlawful business practices;
- 28 3. For meal and rest period compensation pursuant to California Labor

1 Code § 226.7 and IWC Wage Order No. 5-2001;

2 4. For liquidated damages pursuant to California Labor Code §§ 1194.2
3 and 1197.1;

4 5. For preliminary and permanent injunctive relief enjoining
5 DEFENDANTS from violating the relevant provisions of the California Labor
6 Code and the IWC Wage Order and from engaging in the unlawful business
7 practices complained of herein;

8 6. For waiting time penalties pursuant to California Labor Code § 203;

9 7. For statutory and civil penalties according to proof, including but not
10 limited to all penalties authorized by the California Labor Code § 226(e);

11 8. For interest on the unpaid wages at 10% per annum pursuant to
12 California Labor Code §§ 218.6, 1194, and 2802, California Civil Code §§ 3287
13 and 3288, and/or any other applicable provision providing for pre-judgment
14 interest;

15 9. For reasonable attorneys' fees and costs pursuant to California Labor
16 Code §§ 1194 and 2802, California Civil Code § 1021.5, and any other applicable
17 provisions providing for attorneys' fees and costs;

18 10. For declaratory relief;

19 11. For an order certifying the First, Second, Third, Fourth, Fifth, Sixth,
20 Seventh, Eighth, and Ninth causes of action as a class action;

21 12. For an order certifying that the collective action pursuant to the FLSA and
22 prompt issuance of notice pursuant to 29 U.S.C. § 216(b);

23 13. For an order appointing PLAINTIFF as class representative and
24 PLAINTIFF's counsel as class counsel; and

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26 //

27 //

28 //

1 14. For such further relief that the Court may deem just and proper

2
3 DATED: July 31, 2017

Respectfully submitted,

4 MATERN LAW GROUP, PC
5 Matthew J. Matern
6 Tagore Subramaniam
7 Daniel J. Bass

8 By: /s/ Matthew J. Matern

Attorneys for Plaintiff

9 Jener Da Silva

10 **DEMAND FOR JURY TRIAL**

11 PLAINTIFF hereby demands a jury trial with respect to all issues triable of
12 right by jury.

13
14 DATED: July 31, 2017

Respectfully submitted,

15 MATERN LAW GROUP, PC
16 Matthew J. Matern
17 Tagore Subramaniam
18 Daniel J. Bass

19 By: /s/ Matthew J. Matern

Attorneys for Plaintiff

20 Jener Da Silva
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